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Main Reception: (617) 748-3100

United States Courthouse, Suite 9200

1 Courthouse Way
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5-2005-200

My Number is
Tel: 781-704-8982
TO: DUTY ATTORNEY

COMPLAINT FORM

Submitted

by Anthony

BY MAT

NATURE OF COMPLAINT:

Please See Case pending No.
04-CV-10468 GAO.

Anthony BATTEN ✓

In this case Attorneys for
Defendants are falsifying official
documents and Destroying evidence

Penal Code Prohibit Attorneys
MARK BATTEN, Tom Shirley,
Liza Coulter To destroy
or falsification of official
In Federal Litigation
Your Attention in this matter
very demanding as the
law contains and the

Anthony Bayad

From: Amado at Navas-Baseball [amado@navas-baseball.com]
Sent: Sunday, April 04, 2004 10:13 AM
To: anthonybay2000@yahoo.com; abayad@gicamerica.com
Subject: First Amendment Right to Protect Myself
Importance: High

From: Shawna Callahan [scallaha@cisco.com]
Sent: Tuesday, March 16, 2004 7:15 PM
To: scallaha@cisco.com
Cc: nrubin@cisco.com
Subject: Immediate Action Required - Avaya Document

Importance: High
 Dear Employee,

It has come to our attention that on or about February 20 you may have received an email with the header, "Avaya response to CiscoCallManager4.0". The email contained an attached document that was entitled "Avaya Competitive Alert".

There is some question as to whether Cisco should have been given this document. To ensure that Cisco employees meet our company's high ethical standards and act in accordance with the law, do not forward this document. Please destroy any hard or soft copies of this document, including any soft copies stored on your computer's hard drive or in your email box. Please respond to this email identifying whether you had this document in your possession, listing the email addresses of anyone to whom you forwarded the document and confirming that the required action was taken to destroy any copies in your possession.

Distribution of confidential competitive documents is a violation of company policy and future violations could be subject to disciplinary action. For your reference, here is the Legal Policy on Using Competitive Documents: http://wwwin-tools.cisco.com:sales/go/marketingmi/copyright?ServiceId=86&ServiceType=1&ModuleId=18120&message_id=85101&module_id=18120.

If you have any questions, please contact Shawna Callahan (scallaha@cisco.com or 408-853-0290) or Neal Rubin (nrubin@cisco.com or 408-853-1705).

Thank you for your prompt attention to this matter.

Shawna Callahan
 Ethics Program Office

*Shawna Callahan
 Ethics Program Office
 WW Diversity & Ethics
 Cisco Systems, Inc.*

Anthony Bayad

From: Amado at Navas-Baseball [amado@navas-baseball.com]
Sent: Sunday, April 04, 2004 9:59 AM
To: anthonybay2000@yahoo.com; abayad@gicamerica.com
Subject: First Amendment Right to Protect my family

To: 'abayad@gicamerica.com'
Cc: 'anthonybay2000@yahoo.com'
Subject: FW: Avaya response to CiscoCallManager4.0

Importance: High

-----Original Message-----

From: Rob Learned (rlearned) [mailto:rlearned@cisco.com]
Sent: Sunday, February 22, 2004 10:04 PM
To: Seteam
Subject: FW: Avaya response to CiscoCallManager4.0

Team,

After some clarification from Joel. I probably should not have sent this to all of you. Let go a head and delete the file and forget about it. I originally thought you might find it interesting, but after thinking about it and have some things pointed out to me by Joel (See below) we should get rid of it.

Thanks,

Rob Learned, CCIE #4857
SEM Southeast Channels
400 Carillon Parkway, Suite #220
St. Petersburg, FL 33716
Direct: (727) 540-1452
Mobile: (727) 480-5654
Page: (800) 365-4578
Email: rlearned@cisco.com

From: Joel Barrett [mailto:joel.barrett@cisco.com]
Sent: Sunday, February 22, 2004 9:53 PM
To: rlearned@cisco.com
Subject: RE: Avaya response to CiscoCallManager4.0

It's unethical to distribute it because it's obviously from Avaya and every page is marked, "Avaya Inc. Proprietary and Confidential. Use pursuant to the terms of your signed agreement or company policy."

We wouldn't want someone from Avaya looking at documents we mark Proprietary or Confidential, therefore it's unethical for us to be viewing their's.

In addition, in our "Code of Business Conduct", the "Proprietary Information" section

Anthony Bayad

From: Amado at Navas-Baseball [amado@navas-baseball.com]
Sent: Sunday, April 04, 2004 9:57 AM
To: abayad@gicamerica.com; anthonybay2000@yahoo.com
Subject: First Amendment Right to Protect myself
Importance: High

To: 'abayad@gicamerica.com'; 'anthonybay2000@yahoo.com'
Subject: FW: Avaya Email

Importance: High

-----Original Message-----

From: Rob Learned (rlearned) [mailto:rlearned@cisco.com]
Sent: Wednesday, March 17, 2004 11:23 AM
To: Seteam
Subject: Avaya Email

Team,

If you have received anything from Shawna Callahan questioning the Avaya email that was passed to you, please comply with her request. No one is in any trouble they are simply investigating whether it should have been passed around.

Rob Learned, CCIE #4857
SEM Southeast Channels
400 Carillon Parkway, Suite #220
St. Petersburg, FL 33716
Direct: (727) 540-1452
Mobile: (727) 480-5654
Page: (800) 365-4578
Email: rlearned@cisco.com

[BACK TO HOME PAGE](#)

Piper Rudnick

Labor and Employment Law Alert

Preserving, Protecting and Producing Electronic Data

On July 20, 2004, a federal district court in New York issued a lengthy and detailed opinion sanctioning UBS Warburg LLC for failing to ensure that all relevant electronic information was preserved in connection with a lawsuit brought against the company by a former equities trader, Laura Zubulake, alleging gender discrimination, failure to promote, and retaliation under federal, state, and city law. *Zubulake v. UBS Warburg LLC*, No. 02 Civ. 1243 (SA), 2004 WL 120866 (S.D.N.Y. July 20, 2004). In an opinion likely to serve as a landmark case in the area of preserving, protecting, and producing electronic information, the court established useful guidelines for all companies who wish to avoid the imposition of discovery sanctions for spoliation and the likelihood of an adverse inference instruction being given at any subsequent trial. A court's adverse inference instruction authorizes the jury to infer that the destroyed evidence would have been favorable to plaintiff and harmful to the defendant – a difficult, if not impossible, hurdle for a defendant to overcome.

Background

As early as April 2001, UBS was on notice of anticipated litigation by Ms. Zubulake, although she did not file her initial charge of gender discrimination with the EEOC until August 16, 2001. Immediately after the EEOC charge was filed, in-house lawyers for UBS issued oral instructions to employees not to destroy or delete potentially relevant documents and to segregate relevant materials into separate files. The instructions, however, did not address "backup tapes" maintained by UBS's information technology personnel. UBS's outside counsel met with a number of "key employees" and reminded them to preserve relevant documents, including e-mails. In-house counsel then put outside counsel's instructions in writing. In August 2002, after Ms. Zubulake, in discovery, requested e-mails stored on back-up tapes, UBS's outside counsel instructed UBS information technology personnel to stop recycling backup tapes.

Ms. Zubulake claimed relevant e-mails had been deleted from UBS's active servers and only existed on backup tapes. Discovery disputes ensued, resulting in the court sanctioning UBS and rendering four separate opinions in the tortuous history leading to this most recent opinion. During re-depositions, the plaintiff learned that additional e-mails preserved on UBS's active servers were never produced. It was then discovered that some UBS employees had deleted relevant e-mails, some of which were ultimately produced after recovery from backup tapes and some of which were lost. Ms. Zubulake requested sanctions due to UBS discovery abuses as well as an adverse inference instruction from the court at trial. The court, in imposing the sanctions and

granting Ms. Zubulake's request for an adverse inference instruction at any subsequent trial, found a "failure to communicate" between counsel and client and set the bar high for preserving, protecting, and producing electronically stored information.

Significance

- "Spoliation" is not only the destruction or significant alteration of evidence, but constitutes the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation;
- Employers can run afoul of the guidelines set forth in this opinion for preserving, protecting, and producing electronically stored information even in the absence of any intentional efforts to destroy relevant information;
- Employers' carelessness or lack of planning can lead them to run afoul of the requirements to preserve, protect, and produce electronically stored information;
- The importance of discovery obligations should be clearly communicated to clients;
- "Litigation holds" on all relevant information, particularly electronically stored information, should be instituted whenever litigation is reasonably anticipated;
- "Litigation holds" should be updated and reissued so new employees are aware of their obligations to preserve relevant information, particularly electronically stored information;
- Compliance with "litigation holds" should be overseen by in-house and outside counsel;
- Clients' efforts to retain and produce relevant documents should be affirmatively monitored;
- Affirmative steps should be taken to ensure that all sources of discoverable information are identified and searched;
- Counsel should familiarize themselves with clients' documents retention policies and procedures;
- Counsel should gain an understanding of clients' "recycling policies" by speaking with the clients' technology personnel;
- Similarly, counsel should ask "key players" involved in the litigation to explain how information is stored;
- "Key players" should be unambiguously reminded of their ongoing obligation to preserve relevant information;
- All employees should be instructed to produce copies of all relevant active files;
- All backup files containing electronically stored information should be maintained and stored in a safe place;
- Counsel should take physical possession of backup tapes when a small number is involved, or segregate the tapes and place them in storage if a large number is involved; and
- Failure to comply with the guidelines set forth in Zubulake v. UBS Warburg LLC may result in the imposition of sanctions.

For more information, please contact Roxane Sokolove Marenberg, 202.861.3419, Dov Grunschlag, 415.659.7003, or Adrienne Mazura, 312.368.2172 in the Labor and Employment practice group at Piper Rudnick LLP.

[PRINTER FRIENDLY VERSION]



Competitive Alert

Avaya obtained the information contained in this document from industry consultants, customers, published research, trade journals and internal research. To the best of our knowledge, this report is based on the most current information available. Although every effort has been made to assure freedom from errors, Avaya Inc. is not responsible for the accuracy of all the information contained in this document.

Written by Jamie Weiss, ECG Technical Marketing 02/09/04

Within the next few days it is expected that Cisco will announce the next release of CallManager software, Release 4.0. In preparation for the press announcement and subsequent hype we have prepared the following document to assess the market impact of CallManager 4.0. In addition this Alert is intended to provide the relevant competitive positioning to keep the focus on Avaya's strengths and to avoid getting bogged down in the rhetoric that often accompanies these moves. In addition to the press release, you can expect to see a customer testimonial and quotes as well as broad press coverage as if it were an industry shaping event. The key message to keep in mind in viewing the information is that most of what is being announced is simply trying to achieve parity with what Avaya already provides customers. Moreover, there are still significant gaps in the capabilities of their offers. Also, the ability that our channels add to deliver a solution that provides true customer value remains a distinct competitive advantage.

COMPETITIVE SUMMARY

For detailed information please see the Cisco press release posted on Cisco's web site <http://newsroom.cisco.com/dlls/index.htm>. The following summarizes the major enhancements. These are categorized in four areas:

- New Features
- Feature Enhancements
- Security Enhancements
- Management & Serviceability Enhancements

Each of these will be explored individually, however as there is quite a bit that is new not everything will be covered in detail. Instead we will focus on the more significant changes.

New Features:

- Web Dialer – Previously available as a separate downloadable application this is now included in the core CallManager 4.0 feature set. Allows a user access to a web based corporate directory from which they can click to dial.
- IP Communicator Support (New Softphone) - This is a significant change to their Softphone. The Softphone is now based on their proprietary Skinny Station Protocol (SCCP) instead of JTAPI. This provides improvement in two areas:
 - Expected feature parity with hard phones
 - Reduces device weight for Softphones from 3 to 1.
- SIP Trunk Support
 - Allows for inter-cluster communications via SIP Trunk
 - Interoperability with Cisco SIP proxy server
- MLPP – Multi-Level Precedence and Preemption has been added specifically for Federal Government sales.
- Malicious Call Trace – adds some Malicious Call Trace features into CallManager.
- New Phones – re-announcement of 7970G Touch Screen phone & 7936 IP Conference phone previously announced in the fall.

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Feature Enhancements:

- IP Phone Line Features – Cisco has expanded the number of call appearances per extension number from 2 to 20.
- Hunt Groups – Added circular and broadcast to hunt group types. **STILL NO INHERENT ACD CAPABILITY!**
- Media Resources – Expanded the number of DSPs available in some gateways. Also introduced new Annunciator capability. Allows for custom announcements to be played in conjunction with MLPP. **Only used with MLPP. Not a delayed announcement for Contact Center applications.**
- IP Manager Assistant – Separate application that is used to emulate shared lines (bridged appearances) now incorporated into CallManager 4.0 package. It still requires the application but no longer sold separately.
- Expanded QSig Support – Have added diversion capability, support for message waiting indication and path replacement, which are required for shared voice mail applications.

Security Enhancements:

- Cisco Security Agent (CSA) Support – Provides Host intrusion detection to block out unknown files or applications.
- Phone Hardening –
 - Prohibits sniffing of packets by plugging into phone
 - Provides phone firmware identification
 - Requires verification of config. file before allowing download
- Server OS Hardening –
 - New hardware security tokens
 - Prevents rogue phones
 - Embedded token on “select” phones
 - Forced NT Authentication to SQL database
- Signaling Security Hardening – checks security patches between CallManager and phones
- Media Integrity & Privacy – AES media encryption on “select” phones
 - 7940
 - 7960
 - 7970

Management & Serviceability Enhancements:

- Real Time Monitoring Tool
 - Moved onto standalone server to enhance performance
 - Now always running instead of just when accessed via GUI
 - Includes some pre-packaged reports to reduce amount of customization required to be functional.
- API Enhancements
 - Enhancements to improve performance
 - Allows custom reports to be written to view real time performance
- Trace Collection Tools – new tool to improve setting up traces
- Multi-level Administration - Previously available as a separate download. Now incorporated into CallManager 4.0.
 - Can create separate administrative IDs with different permission levels.



MARKET IMPACT & POSITIONING

While there are a significant number of new features and enhancements this release can very accurately be characterized as “catching up”. CallManager 4.0 simply is adding some, but not all, of the capabilities that enterprises have come to expect. While they have closed that gap in some respects there are still issues that they have not addressed. These would be characterized by the capabilities that they have yet to address as well as limitations in the new capabilities they are introducing. The following summarizes a few of the ones we are aware of. There may be others but these are simply the obvious ones based on the limited pre-release information that was available.

New Features:

Web Dialer – This is still a separate application and nothing new. All that has changed is that it is now packaged with CallManager. Limitations include:

- It is not integrated into the Softphone
- Limited to a corporate directory
- Does not enable telephone numbers in web pages to be dialed similar to the capabilities of the Avaya Softphone.

IP Communicator – While support of Skinny Station Protocol does solve two of the significant outages, scalability and feature support, there are still gaps. Most notably:

- Lack of support on SRST. This means that mobile workers cannot use Softphones in branch offices unless a full CallManager server is deployed. Due to limitations of scalability and networking of multiple CallManager servers this is unlikely as their primary offer in small offices is still SRST.
- No integration of SIP, Presence, or Instant Messaging into the Softphone.

SIP Trunk Support – These capabilities are provided in Communication Manager 2.0 and the new Avaya Converged Communication Server. Additionally, the Cisco SIP Proxy server is a unique application that has a distinctive administrative interface from the Cisco CallManager increasing administrative overhead for the customer.

MLPP – In order to sell this solution to the Federal Government, and specifically the Department of Defense, it needs to be certified by the Defense Information Systems Agency/Department of Defense Joint Interoperability-testing (DISA/JTIC). Avaya has achieved this certification. Cisco has not certified their MLPP solution or CallManager. Until they do this is an empty offer.

Malicious Call Trace - Another enhancement to attempt to close the gap in feature disparity. This is Cisco's first attempt at incorporating MCT into the CallManager software instead of relying upon a 3rd party application. Not all capabilities of MCT as provided in Communication Manager are included.

New phones – This is actually a re-announcement of devices, which were previously introduced in September, and now just became available. The 7970 is a color touch screen telephone that trailed Avaya's offer to the market by roughly a year and requires local power to provide full functionality.

Feature Enhancements:

IP Phone Line Features – While the number of call appearances has increased not much else has changed. Additionally while the software allows for up to 20 appearances of a directory number, most phones that Cisco sells will not support additional line appearances.

Hunt Groups - Without some kind of basic ACD capability these enhancements are virtually meaningless. There are very few applications that drive value in a customer's business that can be supported with hunt groups.

Media Resources – It is not quite clear how increasing the number of DSPs in a router equates to an enhancement in CallManager software? The annunciator capability is a nice addition to provide information in conjunction with MLPP but is limited in its usefulness since it cannot be used for anything else.

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IP Manager Assistant – Packaging the application into CallManager doesn't address the biggest issue. It is still an additional application that needs to be run in order to provide just some of the functionality included in Communication Manager. This isn't even incorporated into other desktop productivity tools like the new Softphone or Web dialer applications. A user would need to be running each application separately in addition to using the telephone.

Expanded QSig Support – Key new QSig capabilities have been added. The level of QSig support provided still is far less than what Communication Manager is capable of supporting and there is limited experience in Cisco's channel partners in integration.

Security Enhancements

The majority of these enhancements are designed to address issues that are relatively unique to Cisco. There are a couple of clauses that warrant some attention.

Server OS Hardening – Does this mean that Cisco is acknowledging that they have some concerns with the Windows 2000 OS that CallManager runs on? Rumors abound that they will be porting CallManager over to Linux. While no small feat that will take time to accomplish it does raise some interesting questions. Is this further indication that they have concerns with Windows 2000? What does this mean to customers who have invested in the current platform? What will be the migration path? How painless, or painful, will it be?

Media Integrity – Following Avaya's lead by introducing AES encryption only validates our approach to providing secure communications. For Cisco to truly follow suit the following concerns would need to be addressed.

- Encryption supported on all telephones not just the three high-end telephones, 7940, 7960, & 7970, but also the devices they most commonly sell to customers.
- Supporting encryption in the gateways and not just on IP Phone to IP phone communications.
- What is the impact of the overhead associated with AES on performance? This is a lot of processing that they will be expecting the telephone sets to perform without any degradation. Maybe that is why it is limited to three phones?

Management & Serviceability Enhancements:

The enhancements made here are merely addressing deficiencies in the offer. In most cases these capabilities do not even bring CallManager to parity. The biggest surprise is that we have not made more of these deficiencies in the past.

SUMMARY

There are a couple of key takeaways from this announcement. The first and foremost is that this should be viewed in its true context:

- This is a catch-up move pure and simple.
- Cisco has still not closed the gap in features, functionality, or capabilities. Much of what they have introduced falls short of the functionality that Avaya delivers.
- There is an inherent contradiction that we should be taking advantage of.
 - Many of these enhancements are capabilities that Cisco questioned the value of with customers in the past yet they invested heavily to develop the same types capabilities.
 - Doesn't this hypocrisy question their credibility when they try to convince customers that capabilities we provide just aren't needed?
- There are some consistent flaws throughout that should be exploited:
 - Multiple applications needed to deliver the solutions that are tightly integrated in Communication Manager
 - Increased management/administrative responsibilities that belie a higher TCO
 - Limitations in the availability of these enhancements depending on types of phones deployed.
 - Stability issues. As of 2/9/04 there are over 200 "Caveats" listed for CallManager 4.0 on Cisco's web site, http://www.cisco.com/en/US/products_sw_voicesw_ps556/prod_release_note09186a06801e87a5.html#1283_7

Most importantly, if Cisco is a leader in IP Telephony then why is it that when they introduce something new, it's not new to us?

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